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2013 JUL 29 A 10:31

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

LB

11 ZHENGHENG XIE and WEI SONG,

CV Case No. 13 3489

12
13 Plaintiffs,

COMPLAINT FOR DAMAGES

14 v.

DEMAND FOR JURY TRIAL

15 ASIANA AIRLINES, INC.,

16 Defendant.

17
18 Plaintiffs ZHENGHENG XIE and WEI SONG, individually and through their undersigned
19 attorneys, allege as follows:

20 **I. JURISDICTION**

- 21 1. This Court has jurisdiction over the subject matter of this case pursuant to Article 33 of the
22 Convention for the Unification of Certain Rules for International Carriage by Air Montreal,
23 May 28, 1999 (hereafter the "Montreal Convention"), which both the United States of America
24 and the Republic of Korea have signed and adopted. Specifically, under Article 33(1) of the
25 Montreal Convention, the contract of carriage between Plaintiff ZHENGHENG XIE (hereafter
26 "XIE") and Defendant was made in this District (and Defendant has a place of business and
27 does business in this District). As the Montreal Convention is a treaty of the United States, this
28 Court has subject matter jurisdiction over this case under 28 U.S.C.A. § 1331.

II. VENUE

2. Venue in the Northern District of California, San Francisco Division, is proper pursuant to 28 U.S.C. 1398(a) and Local Rule 3-2 because a substantial part of the events and omissions giving rise to the claims as alleged herein occurred in this District.

III. PARTIES

3. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above paragraphs.
4. Plaintiff XIE was a passenger on board Asiana Airlines Flight No. OZ 214 bound for San Francisco, California when it crashed on July 6, 2013 at San Francisco International Airport (hereafter "ASIANA Crash"). XIE suffered, and continues to suffer, from extreme bodily and mental injuries and economic losses as a direct result thereof.
5. Plaintiff WEI SONG (hereafter "SONG") has lost, and will continue to lose, the comfort and consortium of her husband, XIE, as a direct result of the crash and has suffered, and continues to suffer, damages therefrom.
6. Defendant ASIANA AIRLINES, INC. (hereafter "ASIANA") is registered as a business entity with the California Secretary of State, with an active status. ASIANA routinely engages in continuous and systematic business in this District, sufficient to subject it to personal jurisdiction of this Court. ASIANA'S principal place of business is in Seoul, Republic of Korea.
7. At all material times, ASIANA entered into the contracts of carriage with Plaintiff XIE and was in control of, and responsible for, their safe transport from Seoul, Republic of Korea to San Francisco, California.

IV. GENERAL ALLEGATIONS

8. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above paragraphs.
9. On July 6, 2013, Asiana Flight No. OZ 214 (hereafter "Flight 214") departed Incheon International Airport, South Korea at 5:04 p.m. KST (08:04 UTC) for a transpacific flight to San Francisco International Airport, California, USA (hereafter "SFO"). The aircraft in use was

- 1 a Boeing 777-200ER, Registration No. HL7742 (hereafter "Subject Aircraft"), with 307 total
 2 souls on board, including both crew and passengers. Plaintiff XIE was a passenger on board.
- 3 10. This fateful flight did not reach its destination safely. The Asiana Crash occurred at
 4 approximately 11:26 a.m. PDT (18:26 UTC) on July 6, 2013, when the Subject Aircraft landed
 5 short of Runway 28L's threshold at SFO and struck the seawall that projects into San Francisco
 6 Bay, separating the tail section of the Subject Aircraft from the aircraft's fuselage and causing
 7 passengers, including Plaintiff XIE, to be violently thrown about the cabin and to suffer
 8 extreme and catastrophic injuries and emotional distress, as well as causing the deaths of three
 9 Chinese passengers.
- 10 11. The Asiana Crash occurred due to the gross negligence and recklessness of the ASIANA flight
 11 crew on Flight 214, in woeful violation of numerous international and United States airline
 12 industry standards and established flight rules. Among an extensive litany of errors and
 13 omissions, the Flight 214 flight crew failed to observe the most fundamental procedures for a
 14 visual landing approach into SFO, failed to appropriately monitor flight conditions on
 15 approach, and failed to communicate and react in the cockpit to those flight conditions.
- 16 12. Moreover, the flight crew of Flight 214 was inadequately trained and supervised by ASIANA
 17 and failed to comply with the most rudimentary cockpit resource management protocols.
- 18 13. Defendant's failures constituted a gross, wanton, and willful disregard for the rights and safety
 19 of all passengers aboard Flight 214 and needlessly caused injuries, damages, and deaths to
 20 innocent passengers and their loved ones.

21 **FIRST CAUSE OF ACTION**
 22 **(Montreal Convention Article 17)**

- 23 14. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above
 24 paragraphs.
- 25 15. Pursuant to Article 17 of the Montreal Convention, Defendant ASIANA is absolutely liable for
 26 damages sustained by Plaintiff XIE as a passenger of Flight 214, as said injuries and damages
 27 occurred while he was on board the Subject Aircraft and/or in the course of the operations of
 28 disembarking from the Subject Aircraft. Defendant ASIANA is also liable for loss of

1 consortium and other damages suffered by Plaintiff SONG in that said claims derive from
2 damages suffered by Plaintiff XIE.

3 16. Defendant ASIANA was in exclusive control of Flight 214 and owed non-delegable duties to
4 all passengers for its safe operation at all modes of flight, including the landing approach into
5 SFO on July 6, 2013.

6 17. Defendant ASIANA breached those duties by failing to observe the most fundamental
7 procedures for a visual landing approach into SFO, failing to appropriately monitor flight
8 conditions on approach, and failing to communicate and react in the cockpit to those flight
9 conditions.

10 18. As a direct and proximate result of Defendant ASIANA's acts and omissions that caused the
11 ASIANA crash, plaintiffs were seriously injured and damaged as alleged herein and will
12 continue to suffer from their physical, mental, and economic injuries for the foreseeable future.

13 19. The ASIANA Crash occurred due to the negligence, wrongful acts and omissions of Defendant
14 ASIANA and its servants and agents, and not due to the sole negligence or other wrongful act
15 or omission of any third party.

16 WHEREFORE, Plaintiffs pray for judgment as fully set forth herein.

17 **SECOND CAUSE OF ACTION**
18 **(Gross Negligence)**

19 20. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above
20 paragraphs.

21 21. The ASIANA Crash occurred due to the gross negligence and recklessness of the ASIANA
22 flight crew on Flight 214 and the inadequate training and supervision provided to said crew by
23 ASIANA as hereinabove alleged.

24 22. As a direct and proximate result of Defendant's acts and omissions that caused the ASIANA
25 Crash, Plaintiffs were severely injured and damaged as alleged herein, and will continue to
26 suffer from their physical, mental, and economic injuries for the foreseeable future.

27 WHEREFORE, Plaintiffs pray for judgment as fully set forth herein.

28 **THIRD CAUSE OF ACTION**
(Loss of Consortium on Behalf of WEI SONG)

1
2 23. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above
3 paragraphs.

4 24. Before the ASIANA Crash, Plaintiff XIE was able to and did perform all the duties of a
5 husband, including assisting in maintaining the home, working to help support the family, and
6 providing support and comfort to his wife.

7 25. As a direct and proximate result of the injuries, damages, and mental distress and suffering
8 from the ASIANA Crash, XIE has been unable to perform the duties as hereinabove cited and
9 will continue to be unable to fully perform those duties for the foreseeable future, causing
10 damages to Plaintiff SONG.

11 WHEREFORE, Plaintiffs pray for judgment as fully set forth herein.

12 **PRAYER FOR RELIEF**

13 Plaintiffs pray for judgment against Defendant as follows:

- 14 A. Damages to be awarded in an amount to be determined at trial, including general, special,
15 and compensatory damages, but no less than \$5,000,000;
16 B. Prejudgment interest;
17 C. Costs incurred in bringing this suit;
18 D. Such other and further relief as the Court may deem just and proper.

19 Dated: July 26, 2013

BOWLES & VERNAL LLP

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21 By: 

22 MICHAEL P. VERNA
23 Attorneys for Plaintiffs
24 ZHENGHENG XIE and WEI SONG
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury for all claims for which a jury trial is available pursuant to Federal Rules of Civil Procedure Sections 38(a) and (b).

Dated: July 26, 2013

BOWLES & Verna LLP

By: 

MICHAEL P. VERNA
Attorneys for Plaintiffs
ZHENGHENG XIE and WEI SONG